

VENDOR VERSUS SUBRECIPIENT DETERMINATION

Office of Management and Budget (OMB) Circular A-133 require awarding entities to determine whether an arrangement resulting from a particular award that the awarding entity makes to another organization creates a subrecipient or vendor relationship between the awarding entity and that organization. OMB define the terms "vendor" and "subrecipient", and provide guidance for distinguishing between the two relationships. The information below expands on the guidance provided by OMB Circular A-133.

General

Accurate classification of subrecipients and vendors is critical to a program's success and integrity. OMB require subrecipients (other than for-profit subrecipients) that meet established expenditure thresholds to obtain a Single Audit. A Single Audit includes a financial audit as well as compliance testing. While for-profit subrecipients are exempt from Single Audit requirements, they are not exempt from compliance requirements, or from other audit or monitoring requirements that a program statute or the resulting agreement require in order to verify the for profit-subrecipient's compliance with applicable program requirements.

Vendors, on the other hand, are generally not subject to the same level of scrutiny or requirements. The higher level of scrutiny given to subrecipients reflects the significance of their role to carry out a program, as opposed to vendors that support the program but generally do not make decisions or take actions that impact a program's overall success or failure. Therefore, program compliance requirements are generally not passed through to vendors; however, if a vendor transaction is structured so as to make the vendor responsible for program compliance, the vendor's records must be reviewed to verify compliance.

It is important that accurate classifications be made early in the purchasing process. Early determination facilitates the request and consideration of appropriate information during the selection process, and impacts whether the resulting agreement includes appropriate terms and conditions that require compliance with program requirements. The responsibilities contracted to an organization ultimately affect the level of oversight that needs to occur by the awarding entity in order to best manage risks that impact a program's integrity and overall success.

Definitions

The terms "subrecipient" and "vendor" have the meanings in OMB Circular A-133 §__.105

Subrecipient - an entity that expends awards received from a pass-through entity to carry out a program. In other words, as found in the OMB Circular A-133 Compliance Supplement, "a subrecipient relationship exists when funding from a pass-through entity is provided to perform a portion of the scope of work or objectives of the pass-through entity's award agreement with the...awarding agency." (A pass-through entity is an entity that provides an award to a subrecipient to carry out a program.)

Vendor - "a dealer, distributor, merchant, or other seller providing goods or services that are required for the conduct of a...program..." In other words, as found in the OMB Circular A-133 Compliance Supplement, "a vendor, on the other hand, is generally a dealer, distributor or other seller that provides, for example, supplies, expendable materials, or data processing services in support of the project activities."

Guidance in OMB Circular A-133 §__.210 expand on the definitions above by describing the types of characteristics to consider when determining whether an entity is a subrecipient or vendor. The guidance discusses the following points with regard to determining whether a particular arrangement creates a subrecipient or vendor relationship:

- examining each arrangement against characteristics that OMB identify as being indicative of subrecipient and vendor relationships;
- considering the substance of a relationship more strongly than its form; and
- use of professional judgment in making the determination.

Indicative Characteristics

The guidance provided by OMB Circular A-133 identifies characteristics that are indicative of subrecipient and vendor relationships. The characteristics are indicators only. Accordingly, neither OMB intend the characteristics to be used as a checklist, recognizing that factors other than those listed might also impact the determination. Therefore, each arrangement must be separately considered as a whole to determine whether its characteristics are more indicative of a subrecipient or vendor relationship.

The following guidance expands on the guidance provided by OMB by including examples that further describe each characteristic. As with the characteristics identified by OMB, the examples provided in this guidance are not intended for use as a checklist or to replace the need for professional judgment and separate consideration of each arrangement on its own merits.

Subrecipient

1. Determines who is eligible to receive what financial assistance.
For example:
 - a. Organization determines whether a potential customer meets a program's eligibility requirements for assistance under that program.

2. Has its performance measured against whether it meets the objectives of the program.
For example:
 - a. Awarding entity holds the organization responsible for meeting performance targets that are tied to program objectives.
 - b. Awarding entity holds the organization responsible for meeting expenditure targets to maximize the use of program funding.
 - c. Awarding entity requires organization to submit regular oral or written progress reports and/or explanations of variance relating to program objectives and/or fund maximization.
 - d. Awarding entity may sanction the organization if program objectives are not met.
 - e. Organization must submit a comprehensive closeout package at the end of the agreement.

3. Has responsibility for programmatic decision making.
For example:
 - a. Organization has latitude to make decisions within terms of agreement.
 - b. Organization makes policy decisions governing how it carries out a program.
 - c. Organization makes operational decisions governing how it carries out a program.
 - d. Organization makes decisions regarding the appropriate assistance for a particular customer.

4. Has responsibility for adherence to applicable program requirements.
For example:
 - a. Awarding entity holds the organization responsible for compliance with applicable program statutes, regulations, rules, policies (including local policies) and guidance.
 - b. Organization receives technical assistance or training from the awarding entity relating to program requirements.
 - c. Awarding entity monitors the organization for compliance with applicable program requirements.

5. Uses the funds to carry out a program of the organization as compared to providing goods or services for a program of the awarding entity.
 - a. Organization performs all or a portion of the scope of work or objectives of the award received by the awarding entity.
 - b. Organization's role require more than dealing, distributing or selling goods or services that support a program.
 - c. Awarding entity identifies the organization's programmatic involvement as a separate scope of work and budget that must be approved by the awarding entity.

Vendor

1. Provides the goods and services within normal business operations.
For example:
 - a. Organization exists for the purpose of providing a particular goods or services.
 - b. Organization receives little, if any, instruction from the awarding entity as to how the organization goes about producing the goods or services.
 - c. Organization generally receives payment after delivery of a particular good or service.
 - d. Organization invoices awarding entity in the organization's normal way and is not required to submit a comprehensive closeout package at the end of the agreement.
 - e. Organization assumes the risk if cost of performance increases or requires more time than expected.
 - f. Organization has its performance measured against whether it meets specific contract deliverables, rather than a program's performance outcomes.
2. Provides similar goods or services to many different entities.
For example:
 - a. Organization provides similar goods or services to a number of entities in addition to the awarding entity.
 - b. Services provided are of a repetitive nature.
 - c. Goods provided are commonly available.
3. Operates in a competitive environment.
For example:
 - a. Organization competes with other organizations to provide a similar good or service.
4. Provides goods and services that are ancillary to the operation of the program.
For example:
 - a. Organization aids or supports the program in a subsidiary capacity.
 - b. Organization provides a good or service (in a manner that does not create a subrecipient relationship) which enables the awarding entity to carry out a program.
 - c. Organization provides a particular good or service that enables the awarding entity to operate, e.g., office supplies, janitorial services, equipment, staff development, printing, travel, etc.
5. Is not subject to compliance requirements of the program.
For example:
 - a. Organization is not responsible for compliance with applicable program statues, regulations, rules, policies or guidance.
 - b. Awarding entity does not provide the organization with technical assistance or training with regard to program requirements.
 - c. Awarding entity does not monitor the organization for compliance with program requirements.

Substance over Form

The substance of a relationship is more important than the form. "Substance" refers to the characteristics of the arrangement and whether those characteristics are more indicative of a subrecipient or vendor relationship. "Form" refers to the type of agreement use. Agreements with subrecipients may take a number of forms, such as subawards, subgrants, subcontracts and subagreements. The form is less important to the examination of a relationship than its substance. Similarly, labeling an organization as a subrecipient or vendor in an agreement does not automatically create one type of relationship or the other. The characteristics of the relationship must always be examined to determine whether the arrangement as a whole has qualities that are more indicative of a subrecipient or vendor relationship.

Use of Judgment in Making Determination

Determinations about whether an organization is a subrecipient or vendor are not always straightforward. For example, no single factor will alone dictate the existence of one relationship or the other in all cases. However, Appendix E of the Department of Labor Employment and Training Administration's *One-Stop Comprehensive Financial Management Technical Assistance Guide* does state that, "under no circumstances should a designation of vendor be made for providers that have a financial or performance requirement related to eligibility or selection of participants."

Similarly, an organization need not possess all of the subrecipient characteristics above in order to be a subrecipient, and may in fact possess some characteristics of both a vendor and subrecipient under the same agreement. Therefore, in each case, the determination of whether a particular entity is a subrecipient or vendor requires professional consideration of the preponderance of facts and evidence of a particular agreement against the definition and guidelines set forth by OMB Circular A-133

Subrecipient vs. Vendor Response Form

The attached *Subrecipient vs. Vendor Response Form* may be used and maintained in contract files to document the rationale for such determinations. The form may be modified as needed.